IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 15047 of 2005(N)

PETITIONER:

M/S.SURAKSHA KURIES AND LOANS (P) LTD.,
KARUVANNUR REP. BY IS MANAGING DIRECTOR,
P.BN.SAJEEV KUMAR,A GED 32, S/O.NARAYANAN NAIR,
KARUVANNUR P.O. THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

1. THE INDUSTRIAL TRIBUNAL, PALAKKAD.

2. N.BINDU, NAMBILLIPURATHVEEDU,
P.O. MOORKANADU, THRISSUR.

3. K.C.RADHIKA, KALARIKKAL HOUSE,
P.O.MOORKKANADU, THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN

G.P. SMT.ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 15047/05.

APPENDIX

PETITIONER'S EXHIBITS:

P1 SERIES. COPY OF THE ENQUIRY REPORT.

P2. COPY OF THE PRELIMINARY ORDER BY R1 DTD.5.1.2005.

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.15047 of 2005

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Dated this the 25th day of June, 2007

J U D G M E N T

The petitioner challenges Ext.P2 award of the Industrial Tribunal, Palakkad. The issue referred for adjudication was:

> "Whether the termination of service of Smt.N.Bindu and Smt.K.C.Radhika by the management of M/s.Suraksha Kurries and Loans (P) Ltd. is justifiable? If not what relief they are entitled to?"

2. Since the termination of service of the workmen was after conducting enquiry, the Tribunal considered the validity of the enquiry as a preliminary point. The Tribunal found that enquiry was not conducted properly. Findings in this regard as appearing in paragraph 2.11 of Ext.P2 award read thus:

> 2.11. Since the Enquiry Officer was an outsider, it was incumbent upon the management to inform the workers his appointment prior to the commencement of the enquiry especially when one of the allegations against them is that they disclosed certain confidential matters/accounts to outsiders. In the circumstance, I find justification in their

> demand for proper document appointing the Enquiry Officer before participating in the enquiry. In other words, their non-participation in the enquries was for a justifiable reason of non-supply of the above document and it has to be held that the enquiries are vitiated for violation of the principles of natural justice."

Thereafter, since the management had not sought opportunity to adduce fresh evidence award was passed directing reinstatement with backwages and continuity of service. Ext.P2 award is under challenge in this writ petition.

3. The contention of petitioner is that even assuming that the workmen were not informed about the appointment of the enquiry officer in advance, in so far as the enquiry officer had issued notices to the workmen and they had not raised such a contention before the enquiry officer, the workmen cannot now contend that because of want of intimation regarding appointment of the enquiry officer in advance the enquiry is bad.

4. In answer to the same, the counsel for the workmen would contend that the workmen are entitled to know in advance who is the enquiry officer and

failure to intimate the workmen accordingly, would violate the principles of natural justice. On that contention the counsel for the workmen would support Ext.P2 award.

5. After hearing both sides, I am not satisfied that the failure to inform the workmen in advance as to the appointment of the enquiry officer would vitiate the enquiry. It is an admitted fact that the enquiry officer had issued notice to the workmen and the workmen had not at any time complained about want of intimation by the management about the appointment of the enquiry officer as an objection to the enquiry. The counsel for the workmen also could not point out that any prejudice was caused to the workmen on account of the fact that the workmen were not informed in advance about the person who was appointed as the enquiry officer. Therefore, I do not think that there is violation of principles of natural justice and that the same is sufficient reason for setting aside the enquiry.

6. The learned counsel for the workmen would contend that apart from that contention, other contentions were also raised by the workmen against the enquiry which have not been considered by the Tribunal, since the Tribunal found the enquiry vitiated on that ground alone. In the above circumstances, Ext.P2 award is quashed and the matter is remanded to the Industrial Tribunal for fresh consideration in accordance with law. However, I make it clear that this is subject to the condition that the petitioner shall pay wages under Section 17B as ordered by this court as per order dated 22.2.2006 in full till today, within one month from today.

Writ petition is allowed to the above extent.

sdk+ S.SIRI JAGAN, JUDGE